

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN R. DURSO, JOSEPH FONTANO, :
JACK CAFFEY, DEBRA SERVIDO, :
FALLON AGER NELSON, JON :
GREENFIELD, JOHN CATSIMATIDIS, :
ANGELO AVENA, MORTON SLOAN, and :
JACOB DIMANT, as Trustees and :
Fiduciaries of the LOCAL 338 :
RETIREMENT FUND, :

Plaintiffs, :

- against - :

235 FOOD CORP., 2497 HOLDING CORP., :
2497 REALTY CORP., 2541 FOOD CORP., :
2919 LEHIGH FOOD CORP., :
A&C DEVELOPMENT PARTNERS LLC, :
ARCON CORP., CROWN 148 LLC, :
CROWN 31 LLC, CROWN 49 LLC, :
CROWN KINGSLAND LLC, M&M :
MANAGEMENT CO. LLC, and :
PARSONS FOOD CORP., :

Defendants. :

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JOSEPH F. BIANCO, District Judge:

ORDER
15-CV-5086 (JFB) (GRB)

FILED
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N.Y.

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On March 6, 2017, the Court issued an Order granting plaintiffs' motion for default judgment against defendants 235 Food Corporation, 2497 Realty Corporation, 2541 Food Corporation, A&C Development Partners LLC, Arcon Corporation, Crown 31 LLC, Crown 49 LLC, Crown Kingsland LLC, M&M Management Co. LLC, and Parsons Food Corporation (the "defendants"). (Dkt. No. 42.) By the same Order, the Court referred this matter to Magistrate Judge Gary R. Brown for a Report and Recommendation to address the issue of damages and other relief sought by plaintiffs. (*Id.*) On August 31, 2017, Magistrate Judge Brown issued a Report and Recommendation (the "R&R," Dkt No. 49), recommending that the Court award plaintiffs, in

connection with the default judgment against defendants, damages in the amount of \$108,821.95,¹ representing (1) \$31,212.00 in withdrawal liability; (2) \$33,484.23 in interest on the withdrawal liability; (3) \$33,484.23 in liquidated damages; (4) \$7,493.75 in attorneys' fees; and (5) \$3,147.74 in costs. The R&R was served on defendants on September 1, 2017. (Dkt. No. 50.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R, *i.e.*, by September 15, 2017. (R&R 2.) The date for filing any objections has thus expired, and defendants have not filed any objections to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'") (quoting *Thomas*, 474 U.S.

¹ The R&R also recommends that plaintiffs be awarded additional interest on the withdrawal liability at the rate of \$15.39 per day from December 17, 2016 until the date judgment is entered, as well as additional interest added to the liquidated damages at a rate of \$15.39 per day from December 17, 2016 until the date judgment is entered.

at 155)).

Although defendants have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that a judgment by default is entered in favor of plaintiffs as against defendants 235 Food Corporation, 2497 Realty Corporation, 2541 Food Corporation, A&C Development Partners LLC, Arcon Corporation, Crown 31 LLC, Crown 49 LLC, Crown Kingsland LLC, M&M Management Co. LLC, and Parsons Food Corporation as follows:

- (1) \$31,212.00 in withdrawal liability;
- (2) \$33,484.23 in interest on the withdrawal liability, plus \$15.39 per day, from December 17, 2016 until the date judgment is entered;
- (3) \$33,484.23 in liquidated damages, plus \$15.39 per day, from December 17, 2016 until the date judgment is entered;
- (4) \$7,493.75 in attorneys' fees; and
- (5) \$3,147.74 in costs.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment accordingly and close this case.

IT IS FURTHER ORDERED that plaintiffs serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED.

s/ Joseph F. Bianco

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: September 19, 2017
Central Islip, NY